

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING

Gonzalez v. Total Education Solutions, Inc.

(County of Los Angeles, California Superior Court Case No. 20STCV37984)

As a current or former non-exempt, hourly-paid California employee of Total Education Solutions, Inc., you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Total Education Solutions, Inc. (“Defendant”) show you are a “Settlement Class Member,” and therefore entitled to a payment from this class action Settlement. Settlement Class Members are all persons who currently work or formerly worked as drivers for the Defendant as non-exempt, hourly-paid employees at any time from October 5, 2016, through May 24, 2022 (“Class Period”).

- The settlement is to resolve a class action lawsuit, *Gonzalez v. Total Education Solutions, Inc.*, pending in the Superior Court of California for the County of Los Angeles, Case Number 20STCV37984 (the “Lawsuit”), which alleges that Defendant: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide compliant meal and rest periods or compensation in lieu thereof; (4) failed to timely pay wages upon termination or resignation; (5) failed to provide compliant wage statements; (6) failed to reimburse employees for business expenses; and (7) engaged in unfair competition. Based on these and other alleged Labor Code violations, Plaintiff also seeks penalties under the California Labor Code Private Attorney Generals Act (“PAGA”).
- On June 15, 2023, the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contends that it fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked from July 28, 2019 through May 24, 2022, (“PAGA Period”) as a non-exempt, hourly-paid employee of Defendant, as well, then you will be deemed a “Settlement Aggrieved Employee” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) even if you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, ILYM Group, Inc. about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for October 12, 2023, at 9:00 a.m., in Department 17 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012.

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 9:00 a.m. on October 12, 2023, in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012 Department 17. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant's records show that you currently work, or previously worked, for Defendant as a non-exempt, hourly-paid employee in the State of California at some point during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Jesus R. Gonzalez was a non-exempt, hourly-paid employee of Defendant. He is the "Plaintiff" in this case and is suing on behalf of himself and Settlement Class Members for Defendant's alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal and rest periods, or compensation in lieu thereof, failure to timely pay wages upon termination or resignation, failure to provide compliant wage statements, failure to reimburse employees for business expenses, and engaging in unfair competition.

Based on these and other alleged Labor Code violations, Plaintiff also seeks to recover penalties under the California Labor Code Private Attorney Generals Act.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff's claims do not have merit and do not meet the requirements for class certification. This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Settlement Class Members. The Court has made no ruling on the merits of Plaintiff's claims. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to this settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Plaintiff and Defendant have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the Gross Settlement Amount, which unless increased pursuant to the Settlement Agreement, amounts to \$110,896.86. The Gross Settlement includes: (1) Administration Costs up to \$5,900.00; (2) a service payment of up to \$7,500.00 to Plaintiff Jesus R. Gonzalez, for his time and effort in pursuing this case and in exchange for a broader release of claims against Defendant; (3) up to 35% of the Gross Settlement Amount in attorneys' fees which, unless escalated pursuant to the Settlement Agreement, amounts to \$38,813.90 (4) up to \$25,000.00 in litigation costs to Class Counsel, according to proof; and (5) payment allocated to PAGA penalties in the amount of \$20,000.00 from the Gross Settlement Amount. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA and twenty-five percent (25%) (\$5,000.00) will be distributed to Settlement Aggrieved Employees. After deducting these sums, a total of approximately not less than \$13,682.96 will be available for distribution to Settlement Class Members ("Net Settlement Amount").

The settlement is based on Defendant's representation that there are no more than 2,550 Workweeks worked during the Class Period from October 16, 2016, through May 24, 2022. In the event the number of Workweeks worked by Settlement Class Members during the Class Period increases by more than 10%, or 255 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 2,550 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$100,000.00) by 2,550, which amounts to a Workweek Value of \$39.22. Thus, for example, should there be 2,900 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$13,727.00. ((2,900 Workweeks – 2,550 Workweeks) x \$39.22 per Workweek.) The Gross Settlement Amount shall not be reduced as a result of the total Workweeks falling below Defendant's estimate of 2,550.

Distribution to Settlement Class Members

Settlement Class Members who do not opt out will receive a *pro rata* payment of the Net Settlement Amount based on the number of weeks worked by Settlement Class Members in non-exempt, hourly-paid positions for Defendants in California during the Class Period ("Eligible Workweeks"). Specifically, Settlement Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Settlement Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a

Settlement Class Member is: (Individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Settlement Class Members who worked during the PAGA Period (*i.e.*, Settlement Aggrieved Employees) will receive a *pro rata* share of the \$5,000.00 allocated as PAGA penalties, whether or not they opt out, based on the number of workweeks worked by each Aggrieved Employee during the PAGA Period.

Defendant's records indicate that you worked <<Eligible WW>> as a non-exempt, hourly-paid employee in California during the Class Period and <<Eligible WW>> during the PAGA Period. Based on these records, your estimated payment as a Class Member would be \$<<ESA>> and your estimated payment as a Settlement Aggrieved Employee would be \$<<PAGA ESA>>. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than **August 14, 2023**. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Settlement Aggrieved Employees will be allocated as penalties reported on IRS Form 1099. 20% of each Settlement Payment to Settlement Class Members who do not opt out will be allocated as wages and reported on an IRS Form W-2, and 80% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share. None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Settlement Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive a your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Settlement Class Member, you do not need to take any action to receive the settlement payment(s) set forth above.**

Settlement Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement and payment by Defendants to the Settlement Administrator.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and all Participating Class Members release asserted in the Operative Complaint, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the Operative Complaint, as follows: For the duration of the Class Period, the release includes, for Participating Class Members: (a) all claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide compliant meal periods, or premium compensation in lieu thereof; (d) all claims for failure to provide compliant rest periods, or premium compensation in lieu thereof (e) all claims for the failure to timely pay wages upon termination or resignation; (f) all claims for non-compliant wage statements; (g) all claims for failure to reimburse employees for business expenses; and (h) all claims asserted through California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint (the "Class Released Claims").

For Aggrieved Employees, and, to the extent permitted by law, the State of California, the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice, Amended PAGA Notice, and thereafter alleged in the Operative Complaint, for PAGA civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699 in connection with alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 246 *et seq.*, 432, 510, 512, 1174, 1194, 1194.2 1197, 1197.5, 1198.5, 2802, and 2810.5 (the "PAGA Released Claims"). The Class Released Claims and PAGA Released Claims shall be referred to herein as the "Released Claims."

"Released Parties" refers to Defendant and each of its past, present, and future respective subsidiaries, dba's, affiliates, parents, insurers and reinsurers, and company-sponsored employee benefit plans of any nature and their successors and predecessors in interest, including all of their officers, directors, shareholders, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

Option 2 – Opt Out of the Settlement

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, Social Security Number, and any statement indicating that you do not wish to participate in the Settlement Agreement. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

ILYM Group, Inc.
P.O. Box 2031,
Tustin, CA 92781
Website: www.ILYMGroup.com/TES

Your written request for exclusion must be mailed to the Administrator not later than **August 14, 2023**.

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, if you are a Settlement Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may submit an objection in writing stating why you object to the Settlement. Your written objection must provide your name, address, the last four digits of your Social Security Number, signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s) why you believe that the Court should not approve the Settlement. Your written objection must be mailed to the Administrator no later than **August 14, 2023**. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Approval Hearing

You may, if you wish, also appear at the Final Approval Hearing set for October 12, 2023, at 9:00 a.m. in the Department 17 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, and orally object to the Settlement, regardless of whether you submitted written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

You should be aware that if you do intend to appear in person at the Final Approval Hearing, you are advised to wear face masks pursuant to the Court's current social distancing guidelines. You should consult the Court's website at <https://www.lacourt.org/> for the most current social distancing guidelines.

Attorneys Representing the Parties

The attorneys representing the Parties in the Action are:

Class Counsel

David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Diego Aviles (SBN 315533)
diego@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

Defendant's Counsel

Grace Y. Horoupian (SBN 180337)
ghoroupian@fisherphillips.com
Sean T. Kingston (SBN 276099)
skingston@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 789-2145
Facsimile: (949) 851-0152

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at (888) 250-6810.

You may also visit the Settlement Administrator's website at www.ILYMGroup.com/TES to gain access to key documents in this case, including the Operative Complaint, Settlement Agreement, the Class Notice, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, during regular business hours of each court day. You may also obtain these documents through the Court's website at <https://www.lacourt.org/casesummary/ui/>.

You should be aware that if you do intend to inspect records in person, you are advised to wear face masks pursuant to the Court's current social distancing guidelines. You should consult the Court's website at <https://www.lacourt.org/> for the most current social distancing guidelines.

All inquiries by Settlement Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, OR THE JUDGE,
WITH INQUIRIES.**